

## § 584.2-2

## 12 CFR Ch. V (1-1-08 Edition)

in the case of a de novo entry, or 60 calendar days, in the case of an acquisition of a going concern.

(2) The Office may require a savings and loan holding company or subsidiary thereof which has commenced a service or activity pursuant to this section to modify or terminate, in whole or in part, such service or activity as the Office finds necessary in order to ensure compliance with the provisions and purposes of this part and of section 10 of the Home Owners' Loan Act, as amended, or to prevent evasions thereof.

(3) Except as may be otherwise provided in a resolution by or on behalf of the Office in a particular case, a service or activity commenced pursuant to this section shall not be altered in any material respect from that described in the notice filed under paragraph (c)(1) of this section, unless before making such alteration notice of intent to do so is filed in compliance with the appropriate procedures of said paragraph (c)(1) of this section.

(d) *Service corporation subsidiaries of savings associations.* The Office hereby approves without application the furnishing or performing of such services or engaging in such activities as permitted by the Office pursuant to 12 CFR 545.74, as in effect on March 5, 1987, if such service or activity is conducted by a service corporation subsidiary of a subsidiary savings association of a savings and loan holding company and if such service corporation has legal power to do so.

[54 FR 49708, Nov. 30, 1989, as amended at 55 FR 13518, Apr. 11, 1990; 57 FR 14349, Apr. 20, 1992; 60 FR 66870, Dec. 27, 1995; 63 FR 71213, Dec. 24, 1998; 66 FR 15017, Mar. 15, 2001]

### **§ 584.2-2 Permissible bank holding company activities of savings and loan holding companies.**

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to 12 CFR 225.24 or 225.28 are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: *Provided*, That no such savings and loan holding company

or subsidiary thereof shall commence, either *de novo* or by an acquisition (in whole or in part) of a going concern, any activity described in this paragraph (a) without the prior approval of the Office pursuant to paragraph (b) of this section. Where an activity is within the scope of both § 584.2-1 of this part and this section, the procedures of § 584.2-1 of this part shall govern.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the OTS. OTS must act upon such application under the guidelines in part 516, subpart E of this chapter.

(c) *Factors considered in acting on applications.* In evaluating an application filed under paragraph (b) of this section, the OTS shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

[54 FR 49708, Nov. 30, 1989, as amended at 55 FR 13518, Apr. 11, 1990; 57 FR 14349, Apr. 20, 1992; 60 FR 66720, Dec. 26, 1995; 63 FR 71213, Dec. 24, 1998; 66 FR 13010, Mar. 2, 2001]

EFFECTIVE DATE NOTE: At 72 FR 72238, Dec. 20, 2007, § 584.2-2 was amended by revising paragraph (a), effective Apr. 1, 2008. For the convenience of the user, the revised text is set forth as follows:

### **§ 584.2-2 Permissible bank holding company activities of savings and loan holding companies.**

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to regulations that the Board of Governors of the Federal Reserve System has promulgated pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: *Provided*, That

no savings and loan holding company shall commence any activity described in this paragraph (a) without the prior approval of this Office pursuant to paragraph (b) of this section, unless—

(1) The holding company received a rating of satisfactory or above prior to January 1, 2008, or a composite rating of "1" or "2" thereafter, in its most recent examination, and is not in a troubled condition as defined in §563.555, and the holding company does not propose to commence the activity by an acquisition (in whole or in part) of a going concern; or

(2) The activity is permissible under authority other than section 10(c)(2)(F)(i) of the HOLA without prior notice or approval. Where an activity is within the scope of both §584.2-1 of this part and this section, the procedures of §584.2-1 of this part shall govern.

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#### § 584.4 Prohibited acquisitions.

No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall:

(a) Acquire by purchase or otherwise, or retain, more than five percent of the voting stock or shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, nor, in the case of a multiple savings and loan holding company (other than a multiple savings and loan holding company described in §584.2a(a)(ii) of this chapter), acquire or retain more than five percent of the voting shares of any company not a subsidiary that is engaged in any business activity other than those specified in §584.2(b) of this part: *Provided*, That this paragraph (a) shall not apply to voting shares of a savings association or of a savings and loan holding company—

(1) Held as a *bona fide* fiduciary (whether with or without the sole discretion to vote such shares);

(2) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(4) Acquired in securing or collecting a debt previously contracted in good

faith, for two years after the date of acquisition or for such additional time (not exceeding 3 years) as the Office may permit if, in the Office's judgment, such an extension would not be detrimental to the public interest;

(5) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(6) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: *Provided*, That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not in the aggregate exceed five percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company, and such shares are not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company; and

(7) Shares acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to §574.8 of this chapter; *Provided*, That the aggregate amount of shares held under this paragraph (a), (other than pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(6)) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(b) Acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

EFFECTIVE DATE NOTE: At 72 FR 72238, Dec. 20, 2007, §584.4 was revised, effective Apr. 1, 2008. For the convenience of the user, the revised text is set forth as follows:

#### § 584.4 Certain acquisitions by savings and loan holding companies.

(a) *Acquisitions by a savings and loan holding company of more than five percent of a non-subsidiary savings association or savings and loan holding company.* No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall, without prior written OTS approval, acquire by purchase or otherwise, or retain, more than five percent of the voting stock or shares of a